

Summary of Incident:

On January 26, 2017, a red four-door Ford Taurus, bearing Illinois license plate XXXX, was stolen from the XXXX block of W. Roosevelt Road, Chicago, IL 60624. Shortly after the vehicle theft was reported to the Chicago Police Department (CPD), the same vehicle was used in an armed robbery in the XXXX block of S. Harding Avenue, Chicago, IL 60623. The robbery victim provided descriptions of the robbery suspects and their vehicle, including that it was bearing Illinois license plate XXXX, to the responding CPD officers. The CPD officers broadcast the robbery suspect's vehicle description, including the license plate, over the radio.

After hearing the robbery vehicle's description and license plate, two plain clothes CPD officers, in an unmarked grey Ford Crown Victoria, observed the vehicle at the intersection of W. Congress Parkway and S. Kostner Avenue. When the officers attempted to stop the vehicle, it fled. As the vehicle fled, the CPD officers informed the Office of Emergency Management and Communications (OEMC) and a sergeant of the location, the travel speed and the reason for the pursuit. Prior to a marked unit being assigned to and assuming responsibility for the pursuit, the fleeing vehicle collided with a concrete barrier on the slip ramp on Western Avenue and Interstate 290.

After the collision, three male occupants (one later identified as Subject 1) exited the vehicle and fled on foot. A search for the three suspects began and resulted in their location and capture. After the three male suspects were detained, the robbery victim positively identified each male as a suspect. All three males were arrested and charged with various criminal offense related to their conduct on January 26, 2017.

Allegations:

It is alleged that on January 26, 2017, **Officer A #XXXX**:

1. Engaged in an unauthorized pursuit, in violation of Rule 6;
2. Used excessive force when he used a CPD vehicle to "ram" the fleeing vehicle, occupied by Subject 1, in violation of Rule 6; and
3. Arrested Subject 1 for Armed Robbery with a Firearm and Unlawful Use of a Weapon by a Felon, without probable cause, in violation of Rule 1.

It is alleged that on January 26, 2017, **Officer B #XXXX**:

1. Engaged in an unauthorized pursuit, in violation of Rule 6;
2. Used excessive force when he used a CPD vehicle to "ram" the fleeing vehicle, occupied by Subject 1, in violation of Rule 6; and
3. Arrested Subject 1 for Armed Robbery with a Firearm and Unlawful Use of a Weapon by a Felon, without probable cause, in violation of Rule 1.

Applicable Laws and Rules:

Rule 1: Violation of any law or ordinance.

Rule 6: Disobedience of an order or directive, whether written or oral.
Fourth Amendment to the Constitution of the United States

General Order G03-03-01 – Emergency Vehicle Operations - Pursuits

Investigation:**Civil Complaint¹**

On October 19, 2017, COPA received a ***Pro Se Civil Complaint*** filed by Subject 1 in the Northern District of Illinois.² In his complaint, Subject 1 alleges that on January 26, 2017, CPD Officers A #XXXX, and Officer B #XXXX engaged in an unlawful pursuit during which they employed an unlawful use of force, specifically when the officers used a CPD vehicle to strike the fleeing vehicle that Subject 1 was in, which caused the vehicle to strike a concrete barrier. Additionally, Subject 1 alleges that he was arrested for armed robbery without probable cause. Finally, Subject 1 is seeking damages for various injuries sustained in the car accident and for the loss of the vehicle that he was charged with stealing. (Att. 2.)

CPD Records

An **Original Case Report, for RD XXXXXXXX**, details that on January 26, 2017, a red four-door Ford Taurus, bearing Illinois license plate number XXXX, was stolen from the XXXX block of W. Roosevelt Road, Chicago IL 60624. (Att. 7.)

An **Original Case Report for RD XXXXXXXX**, details on January 26, 2017, three black males committed an armed robbery in the XXXX block of S. Harding Avenue, Chicago, IL 60623. The victim of the robbery informed CPD that at least one of the males was armed with .38 caliber revolver and that the males fled the location in a red four door sedan bearing Illinois license plate XXXX. (Att. 13.)

An **Arrest Report for CB XXXXXXXX**, for Subject 1, details that on January 26, 2017, Officers A #XXXX and B #XXXX were on duty and operating an unmarked patrol vehicle when they heard a “flash message”³ detailing an armed robbery that had just occurred. The message advised that three black males had just committed an armed robbery and fled in a red vehicle bearing Illinois license plate XXXX.

After receiving the “flash message,” Officers A and B observed a red vehicle bearing Illinois license plate XXXX at the intersection of S. Kostner Avenue and W. Congress Parkway. Officers A and B attempted to stop the vehicle, however the vehicle fled. Officers A and B pursued the vehicle until the vehicle crashed. Once the vehicle crashed the occupants, one of which was Subject 1, exited the vehicle and fled on foot. CPD members pursued, located, and arrested all three occupants. The officers determined that the red vehicle was reported stolen, under RD XXXX. Subject 1 was arrested for armed robbery, criminal trespass to a vehicle, and felon in possession of a weapon. (Att. 4.)

A **Detective Supplementary Report for XXXX** detailed, that the robbery victim described one of the black male suspects as wearing a grey hooded sweatshirt and red saggy pants. Additionally, the report detailed that after the three males were located and detained, the robbery victim identified each of the males as those who robbed him. Further, the report details, that Assistant State Attorney A “conducted [an] investigation” and approved the arrest of Subject 1 on charges of Felony Armed Robbery with a Firearm and Unlawful Use of a Weapon by a Felon. (Att. 14.)

¹ Subject 1’s Civil Complaint was *Pro Se*, therefore COPA accepted the complaint as his affidavit for the purposes of this investigation.

² Subject 1’s lawsuit is styled, *Subject 1 v. Officers A and, B, XX-cv-XXXX* (N.D. Ill.).

³ A “flash message” is a radio and/or computer transmission providing details of a criminal event that has just occurred. The messages contain location of the event and any available information about possible suspects.

A Traffic Pursuit Report, for Major Accident Investigations Unit Pursuit Tracking Number **17-0032**, detailed that on January 26, 2017, while in unmarked CPD vehicle XXXX, Officer B initiated a traffic pursuit of a red Ford Taurus, bearing Illinois license plate XXXX, which was used in an armed robbery. The pursuit began around XXXX W. Monroe Street and lasted approximately two and one-half miles. Officer B detailed that the driver of the fleeing vehicle was speeding – fifty-five miles per hour, and weaving during the pursuit and that the road was a dry two-way expressway. Additionally, Officer B detailed that the pursuit occurred during daylight hours and there was light vehicle and pedestrian traffic. In his summary of the pursuit, Officer B detailed that he “took into consideration both pedestrian and vehic[ul]ar traffic, road and weather conditions before initiating [the] pursuit.”

Sergeant A #XXXX, the assigned supervisor of the pursuit, monitored the radio transmissions related to the pursuit. Additionally, in his summary, Sergeant A detailed that he “took into consideration both pedestrian [sic] and vehicular traffic, as well as road and weather conditions.” Furthermore, Sergeant A detailed that he requested a marked unit to take over the pursuit but the fleeing vehicle crashed before a marked unit was assigned.

Finally, both Lieutenants A #XXXX and B #XXXX detailed that there was no video footage of the pursuit and, based on the nature of the crime -- an armed robbery, and the lack of vehicle and pedestrian traffic, the “balancing test”⁴ was properly applied. (Att. 22.)

OEMC Records

An **OEMC Audio Recording**, revealed that Beat XXXX, later identified as Officer C #XXXX, responded to the XXXX block of S. Harding Avenue, in response to a dispatched call of an armed robbery. Upon arrival Officer C, transmitted, via radio, that three black male suspects fled the scene of the robbery in a red four door sedan bearing Illinois license plate XXXX. Additionally, Officer C advised that one black male was wearing blue pants and was armed with a revolver; the second black male was wearing a grey hoody and had dreadlocks.

Furthermore, the OEMC transmission details Beat XXXX, later identified as Officers A and B, observing a red four door sedan bearing Illinois license plate XXXX at the intersection of XXXX and S. Kostner Avenue. After observing the vehicle, Officers A and B advised that the vehicle was attempting to flee and the officers were in pursuit. The OEMC dispatcher informed Beat XXXX, later identified as Sergeant A, that Officers A and B are behind a “hot car”⁵ that was just used in an armed robbery. Sergeant A inquired about the speed and direction of travel of the fleeing vehicle. Officer A and B advised that the vehicle was traveling eastbound on Interstate 290 at “regular”⁶ speed from the Kostner Avenue exit.

Approximately, one minute and twenty-seven seconds after providing the direction of travel and speed, Officers A and B advised that the fleeing vehicle was in a collision on the east bound Interstate 290 Western Avenue off ramp. Additionally, the three suspects had fled the vehicle on foot and Officers A and B were in pursuit. (Att. 18, 20.)

⁴ The “balancing test” is an evaluation process used by all CPD employees responsible for the pursuit to determine if the pursuit is within policy. General Order G03-03-01 defines the “balancing test” as “[t]he necessity to immediately apprehend the fleeing suspect outweighs the level of inherent danger created by a motor vehicle pursuit.”

⁵ “Hot car” is a term used to indicate a stolen vehicle.

⁶ Based on the Traffic Pursuit Report, “regular” speed appears to be the posted speed limit of 55 miles per hour. (Att. 22.)

Illinois State Police Records (ISP)

An ISP Illinois Traffic Crash Report, under report number **03-17-XXXXXX**, detailed that on January 26, 2017, a fleeing, stolen red Ford Taurus, bearing Illinois license plate XXXX, that was used in an armed robbery was traveling eastbound on the slip ramp of Interstate 290 towards Western Avenue when it struck the right concrete median barrier with the passenger side of the vehicle. The report details that all the damage to the vehicle was on the passenger side of the vehicle, and did not indicate any damage to the rear of the vehicle. There was no indication that the pursuing CPD vehicle collided with the Taurus nor had any damage to it. (Att. 22, 23.)

City of Chicago Fleet and Facilities Management (2FM) Records

On a November 3, 2017 phone call with COPA, **Manager A**, Manager of Vehicle Adjustment for 2FM, advised that 2FM received vehicle XXXXXX in early March of 2017 for repair to the front driver's side of the bumper. Manager A advised that when XXXXXX was received, photographs of the vehicle were taken. These photographs detailed extensive damage to the front driver's side bumper. Manager A added that, considering the extent of the damage, he found it unlikely that the vehicle would have been permitted to operate from January 26, 2017 until early March of 2017. Additionally, Manager A added that in wintry weather conditions, minor impacts can result in the type of damage he observed to XXXXXX. Manager A provided copies of the photographs. (Att. 28.)

Photographs of XXXXXX⁷ from 2FM depict the entire driver's side corner of the front bumper missing. Additionally, the photographs depict the driver's side marker cracked. Further, the photographs, depict white or off-white scratches to the driver's side front corner panel of the XXXXXX. There is no depiction of any red scratches or transfer paint on XXXXXX in any of the photographs that would indicate a collision with the Taurus that Subject 1 alleges occurred in his complaint. (Att. 27.)

Submitted:

Investigator A, #XX
Investigator, COPA

Approved:

Supervising Investigator A, #XX
Supervising Investigator, COPA

Analysis:

The burden of proof COPA must reach for a finding on each allegation is the preponderance of the evidence standard.

During its investigation, COPA learned that a stolen red Four Taurus, bearing Illinois license plate XXXX, was used in an armed robbery committed by three males, one of which was Subject 1. After committing the armed robbery Subject 1 and his accomplices attempted to flee CPD officers in the stolen Ford Taurus and, while fleeing, the vehicle collided with the concrete barrier on the exit ramp of Interstate 290. Further, there was no indication, from either the ISP Accident Report or 2FM Records, that the CPD vehicle operated during the pursuit collided with the fleeing vehicle. Additionally, during the pursuit of Subject 1, Officers A and B provided regular updates to OEMC and Sergeant A about the location and speed of the pursuit. Additionally, Subject 1 and his accomplices fled the scene of the traffic accident on foot but were later detained and positively identified by the victim of the armed robbery. Finally, after completing a felony review investigation, an Assistant State's Attorney approved of Subject 1 felony arrest.

⁷ XXXXXX is the 2FM designation for CPD vehicle XXXX.

General Order G03-03-01 permits the pursuit of a fleeing vehicle once the “balancing test” is applied. The “balancing test” weights “[t]he necessity to immediately apprehend the fleeing suspect” against the “inherent danger created by a motor vehicle pursuit.” When a CPD officer applies the “balancing test” they must consider the speed of the vehicles, amount of pedestrian and vehicular traffic, weather and road conditions. Additionally, G03-03-01 prohibits CPD officers from forcing a collision or ramming.

On January 26, 2017, Officer B, who was driving the pursuing CPD vehicle, employed the balancing test and determined that a pursuit was warranted, based on the fact the vehicle was stolen, contained armed robbery suspects, and that vehicular and pedestrian traffic was light.

Based on the nature of the criminal offense – armed robbery, the location of the pursuit – Interstate 290, the time of day – 12:45 pm, the weather conditions – clear and dry, and the light vehicular and pedestrian traffic, COPA determined that Officer B’s decision to initiate and continue the pursuit was reasonable under General Order G03-03-01.

The evidence supports the inference that Officer B did not use a CPD vehicle to “ram” the fleeing vehicle Subject 1 was occupying; however, the evidence does not conclusively indicate that contact between the CPD vehicle and the fleeing vehicle did not occur. Therefore, COPA is unable to determine if the two vehicles made contact during the pursuit.

Since Officer A was not operating the CPD vehicle during the pursuit, COPA determined that he was incapable of using the CPD vehicle to striking the fleeing vehicle.

Based on the facts that the victim of the armed robbery identified Subject 1 as one of the perpetrators and an Assistant State’s Attorney approved of Subject 1’s felony arrest, COPA determined that there was sufficient probable cause for Subject 1’s arrest.

Conclusion:

COPA recommends a finding of **Exonerated** for Allegations 1 and 3 against Officer A #XXXX, that on January 26, 2017, he engaged in an unauthorized pursuit; and arrested Subject 1 without probable cause.

COPA recommends a finding of **Unfounded** for Allegation 2 against Officer A #XXXX, that on January 26, 2017, he used excessive force by using a CPD vehicle to “ram” the fleeing vehicle Subject 1 was in.

COPA recommends a finding of **Exonerated** for Allegations 1 and 3 against Officer B #XXXX, that on January 26, 2017, he engaged in an unauthorized pursuit; and arrested Subject 1 without probable cause.

COPA recommends a finding of **Not Sustained** for Allegation 2 against Officer B #XXXX, that on January 26, 2017, he used excessive force by using a CPD vehicle to “ram” the fleeing vehicle occupied by Subject 1.

Deputy Chief Administrator

Findings:

Officer A #XXXX

Allegation 1 – Exonerated

Allegation 2 – Unfounded

Allegation 3 – Exonerated

Officer B #XXXX

Allegation 1 – Exonerated

Allegation 2 – Not Sustained

Allegation 3 – Exonerated